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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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JUL 31 4 14 PM '95

July 31, 1995

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** John C. Surina  
Staff Director

**FROM:** Lawrence M. Noble *L*  
General Counsel

N. Bradley Litchfield *NBL*  
Associate General Counsel

Jonathan Levin *JL*  
Senior Attorney

**SUBJECT:** Revised Draft AO 1995-22

At the Open Session of July 27, 1995, the Commission considered Draft Advisory Opinion 1995-22 (Agenda Document #95-78). In that meeting, the Commission voted to direct the the Office of General Counsel to revise the draft in accordance with the Commission's discussion. The revised draft permits the DCCC to report as they propose and notes that this is not the only permissible method. There are substantial deletions from #95-78. Changes in the retained portions appear in bold.

The revised draft is being circulated on a 72-hour tally basis.

Attachment

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**DRAFT** 14 PM '95

**ADVISORY OPINION 1995-22**

Robert F. Bauer  
B. Holly Schadler  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

Dear Mr. Bauer and Ms. Schadler:

This responds to your letter dated June 2, 1995, requesting an advisory opinion, on behalf of the Democratic Congressional Campaign Committee ("DCCC"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the reporting of reimbursements for allocable expenditures.

You inquire as to the proper method of disclosing transactions involving partial reimbursements of allocable disbursements on the DCCC's monthly reports filed with the Commission. The DCCC has been reporting the transactions described below in a certain manner, and wishes to know whether it may continue to report that way.

The DCCC receives partial reimbursements for certain payroll and vendor disbursements it pays on a regular basis. These expenses are paid from its allocation account set up for payment of allocable expenses of joint Federal and non-federal activities. For example, the DCCC pays one hundred percent of the salary of an employee who also provides services to the Democratic Senatorial Campaign Committee ("DSCC"). The DSCC then reimburses the DCCC for a portion of the employee's salary. In this situation, the DCCC reports its original disbursement for salary, and the

3 Federal and non-federal shares of the disbursement on  
4 Disbursement Schedule H4 (Joint Federal/Non-Federal Activity  
5 Schedule), and these figures are included in the totals on  
6 the Detailed Summary Page for the Federal and non-federal  
7 share of shared activity on lines 21a(i) and 21a(ii). When  
8 the DCCC is reimbursed for the agreed upon portion of the  
9 disbursement, the reimbursement is disclosed as a negative  
10 disbursement on Schedule H4 and the amount is subtracted from  
11 the figures on line 21. Similar reporting occurs with  
12 respect to refunds from vendors to the DCCC for overpayment  
13 or credit.

14 Commission regulations provide that party committees  
15 that make disbursements in connection with Federal and  
16 non-federal elections shall make those disbursements totally  
17 from funds subject to the limitations and prohibitions of the  
18 Act or from separate Federal and non-federal accounts  
19 established under 11 CFR 102.5(a)(1)(i). 11 CFR 106.5(a)(1).  
20 Political committees that have established such separate  
21 accounts shall allocate expenses between those accounts. Id.  
22 For national Senate and House campaign committees of a party,  
23 such expenses include administrative expenses not directly  
24 attributable to a clearly identified candidate, the direct  
25 costs of a fundraising program or event where both Federal  
26 and non-federal funds are collected, and generic voting  
27 drives that do not mention a specific candidate. 11 CFR  
28 106.5(c). Disbursements are made in accordance with  
29 percentages derived from allocation formulae prescribed by  
30

3 the Commission regulations. See 11 CFR 106.5(c) and (f).

4 Commission regulations have prescribed how allocated  
5 expenditures are made and how they are reported. Pursuant to  
6 one of the two options offered in the regulations, the DCCC  
7 has established an allocation account in which funds from its  
8 Federal and non-federal accounts are deposited solely for the  
9 purpose of paying for allocable expenses of mixed activities.  
10 Once a committee establishes an allocation account, all  
11 allocable expenses should be paid from that account. 11 CFR  
12 106.5(g)(1)(ii)(A). When making a disbursement from the  
13 allocation account, the committee transfers funds from its  
14 Federal and non-federal accounts to the allocation account in  
15 amounts proportionate to the allocable shares. 11 CFR  
16 106.5(g)(1)(ii)(B).

17 The committee reports the disbursements from its  
18 allocation account in payment for mixed activities. The  
19 committee identifies the recipient of each disbursement, the  
20 date, the amount, and the federal and non-federal share  
21 comprising that amount. The committee also discloses the  
22 total amount spent for each category. 11 CFR 104.10(b)(4).  
23 Consistent with these requirements, Commission report forms  
24 also require that these amounts be included in the totals of  
25 Federal and non-federal operating expenditure activity. See  
26 11 CFR 104.3(b)(1).

27 You have included examples of how the DCCC reports the  
28 original disbursements and the reimbursements, and how they  
29 are reflected on the Detailed Summary Page. On the Detailed  
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3 Summary Page, your initial payments to shared employees or to  
4 vendors are included under "Operating Expenditures" in the  
5 totals for the "Federal Share" and "Non-Federal Share" of  
6 "Shared Federal/Non-Federal Activity" [lines 21a(i) and  
7 21a(ii)]. On Schedule H4 (page 24), you show the  
8 disbursement of \$6326.67 to joint employee, Richard E.  
9 Murphy, divided between a Federal share of \$5694.00 and a  
10 non-federal share of \$632.67. This reporting is correct, and  
11 presumably included on the aforementioned lines.

12 The reimbursements are disclosed as follows. You have  
13 reported on Schedule H4 (page 12) a "payroll reimbursement"  
14 from the DSCC, disclosing a negative expenditure of \$3418.08,  
15 divided into a Federal share of \$3076.27 and a non-federal  
16 share of \$341.81. For the purposes of this request, you also  
17 include a written notation that reimbursements for the period  
18 from the DSCC and the vendors totaled \$9768.43, divided into  
19 a Federal share of \$8641,60 and a non-federal share of  
20 \$1126.83. These figures are subtracted from figures for the  
21 totals of Operating Expenditures and the appropriate Shared  
22 Activity lines.

23 Normally, refunds to political committees are reported  
24 as receipts and included in the category of "Offsets to  
25 Operating Expenditures (Refunds, Rebates, etc.)" on line 15  
26 of the Detailed Summary Page. See 11 CFR 104.3(a)(2)(vii).  
27 In a situation involving reimbursements allocated between  
28 Federal and non-federal shares, reimbursements and refunds of  
29 allocated disbursements may be reported in the manner you  
30

3 propose. The Commission notes that your method is not the  
4 only permissible method in such circumstances.

5 This response constitutes an advisory opinion concerning  
6 application of the Act, or regulations prescribed by the  
7 Commission, to the specific transaction or activity set forth  
8 in your request. See 2 U.S.C. §437f.

9 Sincerely,

10  
11 Danny L. McDonald  
12 Chairman  
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